

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

HOWARD E. MARTIN, III,	:	Case No. 2:23-cv-02358
	:	
Plaintiff,	:	
	:	
vs.	:	District Judge James L. Graham
	:	Magistrate Judge Caroline H. Gentry
TIM SHOOP, <i>et al.</i> ,	:	
	:	
Defendants.	:	
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**ORDER AND REPORT AND RECOMMENDATION**

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This matter is before the Court following Plaintiff’s failure to pay the filing fee necessary to commence this action. Plaintiff filed an Application for Leave to Proceed *In Forma Pauperis* on August 16, 2023. (Doc. No. 3.) The undersigned Magistrate Judge recommended that the Application be denied. (Doc. No. 5.) On February 23, 2024, the District Judge denied that Application and ordered Plaintiff to pay the full \$402 filing fee within thirty days. (Doc. No. 7.) That deadline has now elapsed and Plaintiff has not paid the required filing fee.

District courts have the power to *sua sponte* dismiss civil actions for want of prosecution to “manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R.R.*, 370 U.S. 626, 630-31 (1962). *See also Jordan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991). Though Plaintiff is proceeding *pro se*, the Supreme Court “[has] never suggested that procedural rules in ordinary civil litigation

should be interpreted so as to excuse mistakes by those who proceed without counsel.”

*McNeil v. United States*, 508 U.S. 106, 113 (1993).

In the instant case, the Court explicitly warned Plaintiff that failure to timely pay the full filing fee would result in the dismissal of this action. (Doc. No. 7, PageID 65.) Nevertheless, Plaintiff failed to comply with this Court’s Order. Accordingly, the undersigned Magistrate Judge **RECOMMENDS** that this matter be dismissed for failure to prosecute. *See, e.g.*, Fed. R. Civ. P. 41(b) (dismissal warranted when plaintiff fails to abide by Rules or to obey court order); *White v. Chambers-Smith*, 1:21-CV-00214, 2021 U.S. Dist. LEXIS 159487 (S.D. Ohio 2021) (Bowman, M.J.); *Jefferson v. Shaver*, 1:20-CV-00707, 2021 U.S. Dist. LEXIS 195853 (S.D. Ohio 2021) (Bowman, M.J.).

In addition, the undersigned’s review of this case has revealed a filing error. It appears that when Plaintiff submitted his Objections to Report and Recommendation for filing (Doc. No. 6), he included an Application to Proceed *In Forma Pauperis* in a separate case, No. 2:24-cv-00327. Due to clerical error, that Application was docketed in the instant case as part of Plaintiff’s Objections. Accordingly, the Clerk is **DIRECTED** to re-docket that filing, currently Doc. No. 6, PageID 51-62, in the appropriate case.

**IT IS SO ORDERED AND RECOMMENDED.**

/s/ Caroline H. Gentry  
Caroline H. Gentry  
United States Magistrate Judge

Procedure on Objections

If any party objects to this Report and Recommendation (Report), that party may, within fourteen (14) days of the date that this Report was filed, file and serve written objections to specific findings or recommendations along with supporting authority for the objection(s). Responses to objections are due ten days after objections are filed and replies by the objecting party are due seven days thereafter. A District Judge will then make a *de novo* determination of the portions of the report, findings, or recommendations to which objection is made. The District Judge may accept, reject, or modify, in whole or in part, this Court's findings or recommendations, may receive further evidence, or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are advised that a failure to object to the Report will result in a waiver of a party's right (1) to have the District Judge review the Report *de novo* and (2) to appeal a decision of the District Court adopting the Report. *See Thomas v. Arn*, 474 U.S. 140 (1985); *U.S. v. Walters*, 638 F.2d 947 (6th Cir. 1981).